

November 1, 2007

Dear Senator:

We are writing to urge you to reject the nomination of Michael B. Mukasey to serve as Attorney General of the United States.

We appreciate Judge Mukasey's intellect and experience. However, a nominee who cannot say simply and without hesitation that waterboarding is a form of torture does not deserve to be Attorney General. Whatever other qualifications he may possess, Judge Mukasey fails that test. He should not be confirmed.

This is not a complex legal question. Nor are the exact details of the procedure critical to forming an answer. In fact, none of the top uniformed lawyers in the U.S. military had the slightest difficulty giving the simple, unequivocal response Judge Mukasey refuses to provide. Here is the question and their responses to the Senate Judiciary Committee *in their totality*: "Is the use of a wet towel and dripping water to induce the misperception of drowning (i.e. waterboarding) legal?"

"No." – Rear Admiral Bruce MacDonald, U.S. Navy Judge Advocate General

"No." – Brigadier Gen. Kevin Sandkuhler, U.S. Marines Judge Advocate General

"No. An interrogation technique that is specifically intended to cause severe mental suffering involving a threat of imminent death by asphyxiation is torture under 18 U.S.C. 2340." – Major General Jack Rives, U.S. Air Force Judge Advocate General

"Inducing the misperception of drowning as an interrogation technique is not legal." – Major General Scott Black, U.S. Army Judge Advocate General

Judge Mukasey was not asked to comment on the details of the CIA program. He was asked to comment on an interrogation technique known as waterboarding that has been prosecuted as a war crime for over one hundred years and has been used by some of the most reprehensible regimes in history, such as the Khmer Rouge. To suggest that this is a close or difficult question and that some forms of causing the fear of death through asphyxiation might be acceptable if one studied the circumstances closely enough is simply unacceptable.

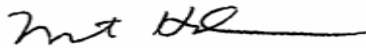
Moreover, a nominee for Attorney General must be able to assure the Congress and the American people that he will vigorously enforce all of the laws against torture and other forms of cruel, inhuman and degrading treatment and will uphold all of our nation's treaty obligations in this vital area, such as Common Article 3 of the Geneva Conventions. These laws are essential to what the United States stands for as a nation and they are also vital protections for United States servicemembers. Recent events and the legal theories previously advanced by the Justice Department have created an extraordinary need for clarity on these points. But despite literally hundreds of pages of answers to Senators' questions, Judge Mukasey left grave doubts on all of these points. This would be unacceptable at any time. It is certainly unacceptable since the revelations of abuse at Abu Ghraib and elsewhere.

Judge Mukasey appears to have many qualities that are important in an Attorney General. But he also appears to lack two qualities which are indispensable: the ability to tell the Administration things that it does not want to hear and the ability to genuinely assure Congress that he will vigorously enforce all duly enacted laws and treaty obligations. As a result, he should not be confirmed as the chief law enforcement official of the United States.

Sincerely,



Kenneth Roth, Executive Director
Human Rights Watch



Morton H. Halperin, Executive Director
Open Society Policy Center



A. Frank Donaghue, Chief Executive Officer
Physicians for Human Rights



Maureen Byrnes, Executive Director
Human Rights First